

## **9 FAM 40.53 Notes**

*(TL:VISA-234; 02-02-2001)*

### **9 FAM 40.53 N1 Background**

*(TL:VISA-234; 02-02-2001)*

*Sec. 343 of Pub. L. 104-208 created a new ground of inadmissibility for immigrant and nonimmigrant aliens coming to the United States to perform services in health-care occupations (other than physicians), unless they present a certificate relating to their education, qualifications and English language proficiency. This category includes:*

- (1) Nurses;*
- (2) Physical therapists;*
- (3) Occupational therapists;*
- (4) Speech and language pathologists;*
- (5) Medical technologists;*
- (6) Medical technicians; and*
- (7) Physician's assistants.*

### **9 FAM 40.53 N2 Health-care Workers Not Subject to INA 212(a)(5)(C)**

#### **9 FAM 40.53 N2.1 Alien Seeking Admission to the United States to Perform Services in a Non-clinical Health Care Occupation**

*(TL:VISA-234; 02-02-2001)*

*An alien working in a non-clinical health-care occupation who is not required to perform direct or indirect patient care is not subject to INA 212(a)(5)(C). Non-clinical occupations include, but are not limited to:*

- (1) Medical teachers;*
- (2) Medical researches;*
- (3) Managers of health-care facilities; and*
- (4) Medical consultants to the insurance industry.*

## **9 FAM 40.53 N2.2 Spouse or Dependent of Immigrant Alien**

(TL:VISA-234; 02-02-2001)

*The statute specifically refers to aliens who are seeking to enter the United States under INA 203(b). A dependent alien admitted for the primary purpose of family unity is not subject to the provisions of INA 212(a)(5)(C).*

## **9 FAM 40.53 N2.3 Family-sponsored Immigrant or Employment-based Immigrant in Non-health-care Occupation**

(TL:VISA-234; 02-02-2001)

*An alien seeking permanent status as a family-sponsored immigrant or as an employment-based immigrant who will not be providing health-care services is not subject to INA 212(a)(5)(C).*

## **9 FAM 40.53 N3 Temporary Waiver for Nonimmigrant Health-care Workers**

(TL:VISA-234; 02-02-2001)

*To ensure that health care facilities remain fully staffed until such time as a final rule can be promulgated, the INS and Department of State have agreed to exercise blanket waiver authority under INA 212(d)(3)(A) for nonimmigrants and temporarily waive the certification requirement. This waiver also applies to Canadians seeking admission in TN status. Health-care workers who receive waivers for INA 212(a)(5)(C) ineligibilities should be issued visas limited to single entry with six-month validity.*

## **9 FAM 40.53 N4 Immigrant Visas for Certain Nurses and Occupational Therapists**

(TL:VISA-234; 02-02-2001)

*The INS has published interim regulations relating to immigrants coming to the United States as nurses or as occupational or physical therapists. The rule grants authorization to nurses who have been certified by the Commission on Graduates of Foreign Nursing Schools (CGFNS); occupational therapists certified by the National Board for Certification in Occupational Therapy (NBCOT); and physical therapists certified by the Foreign Credentialing Commission on Physical Therapy (FCCPT).*

## **9 FAM 40.53 N5 Qualifying as an Immigrant Health-care Worker**

*(TL:VISA-234; 02-02-2001)*

*An alien who wishes to immigrate to the United States to perform in a health-care occupation must be the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker and must be certified by the CGFNS, the NBCOT, or the FCCPT. Certification by these organizations is evidence that the applicants have satisfied the requirements of section 343 of Pub. L. 104-208, including a passing score on the appropriate English language examination. If, however, the personal interview reveals an obvious lack of appropriate English language proficiency or appropriate knowledge of the certified health care field, consular officers should submit the case to the Department (CA/VO/L/A) for an advisory opinion. An approved certificate does not excuse the applicant from all the other relevant statutory and regulatory requirements for visa issuance.*

## **9 FAM 40.53 N6 Validity of the Certificates Issued by CGFNS, NBCOT and FCCPT**

*(TL:VISA-234; 02-02-2001)*

*Certificates issued by CFGNS, NBCOT and FCCPT must be valid at the time of visa issuance and at the time of application for admission into the United States.*